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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/863,749	05/23/2001	Tadashi Fukumoto	Ishii Case 16	9164

7590 05/18/2004

FLYNN, THIEL, BOUTELL & TANIS, P.C.  
2026 Rambling Road  
Kalamazoo, MI 49008-1699

EXAMINER

SALDANO, LISA M

ART UNIT	PAPER NUMBER
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3673

DATE MAILED: 05/18/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

09/863,749

Applicant(s)

FUKUMOTO ET AL.

Examiner

Lisa M. Saldano

Art Unit

3673

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 23 February 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 6, 7, 12--18 and 21-26 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 6, 7, 12, 22, 25 and 26 is/are allowed.
- 6) ☒ Claim(s) 13, 15, 16, 18, 21, 23 and 24 is/are rejected.
- 7) ☒ Claim(s) 14 and 17 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- 1) ☐ Certified copies of the priority documents have been received.
  - 2) ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - 3) ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

## DETAILED ACTION

### *Claim Objections*

1. Claim 13 is objected to because of the following informalities:

Regarding claim 13, line 7, it is recommended that the applicant reword the phrase “top portion of said box and having openings provided” to state “top portion of said box, said slits defining openings provided...”

Regarding claim 16, line 6, it is recommended that the applicant reword the phrase “top portion of said box and having openings provided” to state “top portion of said box, said slits defining openings provided...”

Appropriate correction is required.

### *Claim Rejections - 35 USC § 102*

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Art Unit: 3673

3. Claims 13,15 and 21 are rejected under 35 U.S.C. 102(b) as being anticipated by JP-55110520-A, hereafter referred to as JP'520.

Regarding claim 13, JP'520 discloses structure capable of performing as a submerged breakwater wherein the structure comprises an open box having a vertical wall with at least one opening 3 existing at a lower end of the vertical wall. JP'520 further discloses slits 5a that are inclined with respect to the direction along which waves propagate, disposed along the top portion of the box, wherein the slits define openings provided in spaced apart relationship.

Regarding claim 15, JP'520 discloses the structure defined above wherein at least one hole 3 is formed at the bottom of the box.

Regarding claim 21, JP'520 discloses the structure defined above wherein a height of a coastal side wall 4 of the box is higher than a height of the vertical wall described above. Furthermore, the slits 5a are arranged to become higher toward the coast.

### *Claim Rejections - 35 USC § 103*

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 16, 18, 23 and 24 are rejected under 35 U.S.C. 103(a) as being unpatentable over JP-55110520-A, hereafter referred to as JP'520.

JP'520 discloses structure capable of performing as a submerged breakwater wherein the structure comprises an open box having a vertical wall with at least one opening 3 existing at a lower end of the vertical wall. JP'520 further discloses slits 5a that are inclined with respect to the direction along which waves propagate, disposed along the top portion of the box, wherein the slits define openings provided in spaced apart relationship. The lowermost and uppermost portions of the structure may be considered as two stages.

Regarding claim 18, the openings 3 and slits 5a provide a through path from the box to a coastal side of the structure.

Although, JP'520 fail to explicitly disclose that the structure is placed on a mound, it would have been obvious to one of ordinary skill in the art to place the structure at any location desired on the lower bed of a large body of water. The structure disclosed by JP'520 could be placed anywhere on a seabed. It is common knowledge that seabeds are not necessarily flat and planar surfaces; they are known to possess contours. Some of those contours constitute mounds. Therefore, it would have been obvious to one of ordinary skill in the art to intentionally or unintentionally place the structure of JP'520 on a mound created on a seabed.

Regarding claims 23 and 24, JP'520 discloses the basic method steps required to develop the method steps claimed by the applicant of the present invention.

*Allowable Subject Matter*

6. Claims 12, 6, 7, 22, 25 and 26 would be allowed over the prior art of record.
7. Claims 14 and 17 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

*Response to Arguments*

8. Applicant's arguments with respect to claims 13-18, 21, 23 and 24 have been considered but are moot in view of the new ground(s) of rejection.

*Conclusion*

9. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. For example, the applicant has amended the claims to include matter that was not previously presented. Specifically, the amended claims now include the limitation wherein the slits have openings provided in spaced-apart relationship between said vertical wall and a second vertical wall of the open box.

Art Unit: 3673

10. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lisa M. Saldano whose telephone number is 703-605-1167. The examiner can normally be reached on Monday-Friday; 8:30am-5:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Heather C. Shackelford can be reached on 703-308-2978. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.


Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Application/Control Number: 09/863,749

Page 7

Art Unit: 3673

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HEATHER SHACKELFORD  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 3600